

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B09 / PLR-129879-02

Date:

September 24, 2002

### Legend

Taxpayer =

Trusts =

Date 1 =

Grandchild 1 =

Grandchild 2 =

Grandchild 3 =

Grandchild 4 =

Grandchild 5 =

Spouse =

Corporation =

Date 2 =

Date 3 =

Date 4 =

PLR-129879-02

Dear :

This is in response to your letter dated May 29, 2002, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Generation-Skipping Transfer (GST) Tax exemption.

The facts and representations submitted are summarized as follows: Taxpayer created the Trusts on Date 1. Trusts are five charitable lead annuity trusts. Trusts were created for charitable purposes and to benefit each of his wife's five grandchildren: Grandchild 1, Grandchild 2, Grandchild 3, Grandchild 4, and Grandchild 5 (collectively the "remainder beneficiaries"). Spouse created Corporation on Date 2, and Taxpayer became the owner of certain shares of stock in Company after Date 2.

Taxpayer transferred shares of Corporation stock to the Trusts on Date 3. There have been no other transfers to the Trusts other than the transfer of stock made on Date 3. Date 1 and Date 3 are after September 25, 1985 and prior to October 13, 1987.

Article II, paragraph B, of the trust agreement provides that upon the date of the transfer (Date 3), the property transferred is to be divided into as many equal portions as there are grandchildren of Spouse living on that date (the remainder beneficiaries). Each such portion shall constitute a separate and distinct charitable lead annuity trust, and one trust is to be named for each grandchild.

Article II, paragraph C, subparagraph (1) of the trust agreement provides in part that after Date 3, the trustee shall distribute annually an amount equal to ten percent (10%) of the initial fair market value of each trust created pursuant to paragraph B of this article for charitable purposes for a period of fifteen (15) years from Date 3 hereinafter referred to as the "annuity amount" or "annuity amounts" and as the "annuity period", respectively.

Article II, paragraph G, provides that upon the earlier of the expiration of the annuity period for a trust created pursuant to paragraph B of this Article or the payment of all annuity amounts by a particular trust created pursuant to paragraph B of this Article (herein called the "Date of Termination"), such particular trust shall terminate and the trust estate shall be distributed to the grandchild of Spouse for whom such trust is named or, if such grandchild of Spouse is deceased, to the then living lineal descendants, per stirpes, of such deceased grandchild of Spouse, or, if there be no living lineal descendant of such grandchild of Spouse, the trust estate shall be divided into as many equal portions as there are grandchildren of Spouse then living and grandchildren of Spouse who have died prior to such time leaving lineal descendants then living; one such portion shall be distributed, outright and free of trust, to each grandchild of Spouse then living, and one such portion shall be distributed, outright and

PLR-129879-02

free of trust, to the living lineal descendants, per stirpes, of each deceased grandchild of Spouse.

Taxpayer and Spouse had relied on the same accounting firm for advice and tax return preparation for years. The same accounting firm prepared a Form 709, United States Gift Tax Return, for the year of the transfer to the Trusts. The gift tax return properly reported the gift for gift tax purposes, but did not allocate Taxpayer's GST tax exemption to the transfer. Taxpayer relied on the qualified professionals at the accounting firm to properly prepare the returns. No one at the accounting firm advised Taxpayer that an allocation of GST tax exemption should have been made on the gift tax return. In addition, no one at the law firm that prepared the trust agreement advised Taxpayer of the need to allocate GST tax exemption prior to filing the gift tax return.

The Trusts terminated on Date 4, and the amounts in the Trusts are to be distributed to the grandchildren.

Taxpayer has requested an extension of time to make the allocation of GST tax exemption with respect to the assets transferred to the Trusts on Date 3 and to use the value of such assets as of Date 3 to determine such allocation.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall, by regulation, prescribe such circumstances and procedures under which extensions of time will be

PLR-129879-02

granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Under § 2642(e) and the applicable regulations, in the case of a charitable lead annuity trust the applicable fraction is a fraction (1) the numerator of which is the adjusted generation-skipping transfer tax exemption (adjusted GST exemption), and (2) the denominator of which is the value of all property in the trust immediately after the termination of the charitable lead annuity. The adjusted GST exemption is the amount of GST exemption allocated to the trust increased by an amount equal to the interest that would accrue if an amount equal to the allocated GST exemption were invested at the rate used to determine the amount of the estate or gift tax charitable deduction, compounded annually, for the actual period of the charitable lead annuity. The amount of GST exemption allocated to a charitable lead annuity trust is not reduced even though it is ultimately determined that the allocation of a lesser amount of GST exemption would have resulted in an inclusion ratio of zero. Under § 2642(e)(3), a "charitable lead annuity trust" is defined as any trust providing an interest in the form of a guaranteed annuity for which the transferor is allowed a charitable deduction for federal estate or gift tax purposes under §§ 2055 or 2522. This section applies for purposes of determining the inclusion ratio with respect to property transferred after October 13, 1987.

Notice 2001-50, 2001-34 I.R.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

PLR-129879-02

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

In this case, the special rule for determining the inclusion ratio for a charitable lead annuity trust provided in § 2642(e) does not apply to Trusts because they were funded prior to October 13, 1987. Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of 60 days from the date of this letter to file a supplemental Form 709 with a notice of allocation for the year including Date 3. Taxpayer will allocate Taxpayer's GST exemption to the Trusts on this return. The allocation will be effective as of Date 3, and the gift tax value of the transfers to Trust will be used in determining the amount of GST exemption to be allocated to the Trusts. The inclusion ratio for the Trusts should be determined under §§ 2642(a) and 2642(b). A copy of this letter should be attached to the supplemental Form 709.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings it is subject to verification on examination.

PLR-129879-02

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Heather C. Maloy

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy of this Letter for § 6110 purposes

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